

MEETING RECORD

NAME OF GROUP:

City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING:

Friday, February 24, 2006, 1:30 p.m., Hearing Chambers,
County-City Building, 555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members: Gene Carroll, Tim Francis, George Hancock,
Gerry Krieser and Bob Kuzelka.
Others: Terry Kathe (Building & Safety); Brian Will and
Michele Abendroth (Planning Dept.); Tonya
Skinner (Law Department); applicants and other
interested parties.

STATED PURPOSE

OF THE MEETING:

Regular Meeting of the City Board of Zoning Appeals

Chair Gene Carroll called the meeting to order at 1:30 p.m.

Carroll welcomed new Board member Tim Francis and recognized Tom Wanser for his dedication and years of service as a Board of Zoning Appeals member.

Approval of the minutes of the January 27, 2006 meeting

Krieser moved approval of the January 27, 2006 meeting minutes, seconded by Kuzelka. Motion carried 5-0. Carroll, Francis, Hancock, Krieser and Kuzelka voting 'yes'.

Appeal No. 06002 by Jack Wolfe for a variance of the rear yard setback on property generally located at 5630 S. 84th Street

HEARING

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John Hurd, an attorney appearing on behalf of the property owners, stated that they are here because the property in question has peculiar, unusual and exceptional features which are not commonly found. Part of Antelope Creek flows in this property. There is also a new bike path planned for 84th Street and runs parallel to the creek but adjacent to the subject property. It will run from 84th Street to Old Cheney. Hi-Mark Golf Course is adjacent to the property and the closest part lies in the flood plain. In 2003, the City embarked upon the South 84th Street improvement project. Substantial real estate was taken from this property. Approximately 10,000 square feet of the property was taken to widen the street. As a result, this property only has a right-in, right-out only entrance. The property on the corner has no access by vehicle to 84th Street. The well and septic system were destroyed, and the present owner is required to bring water into the area. In 2004, a zoning change was made for both properties to O2. As part of the zoning process, it was noted that Public Works would require these two lots to be designed with a common driveway. In addition, the South 84th Street improvement project substantially raised the elevation of South 84th Street. There is a 16 feet dropoff, which causes some design issues. They want to have parking in front of the building and the building corner 10 feet from the lot line in question. If they pushed the buildings to the front, this would create problems for drainage. They would also have difficulty with interior vehicular movement. All of the asphalt and concrete would be at the rear of the building adjacent to the bike path. They would have a retaining wall and fence along the bike path. If this property is built as proposed, the area would be landscaped next to the rear of the building. The

owners are proposing one-story buildings. Denial of this request would possibly require a two-story building. They believe this property is generally peculiar, unusual and exceptional. They also would ask who is being protected by denying this request. They do not believe there is any negative impact to the surrounding property. He believes it would also be difficult to find a similar property that has an arterial street, backs to a golf course, a bike path and a creek, is limited to a right-in, right-out method and must provide an easement right to a corner lot to the property.

Carroll asked if the property was owned by the present owner when the right-of-way was taken. Hurd stated that it was under a previous owner at that time.

Bob Schoenleber, architect of the project, stated that he is here to answer any questions on the architecture or design questions.

Kuzelka asked if the retaining wall would be on the building line or property line. Schoenleber stated that they could either tier the retaining wall and landscape it or take the foundation of the building down and have the building line be the edge of the retaining wall.

Hancock asked if the size of the building would have to be reduced if the variance was denied. Schoenleber stated that it may not. The only concerns are with the parking lot and security issues. They would prefer that the front doors face the street.

Carroll asked how the grade change is going to be handled with the south property. Schoenleber stated that they believe they can take up the grade change at the connection point between the two properties.

Michael McKeeman, property owner to the south of the subject property, stated that they are in favor of this application. They are not in favor of a building that is closer to the street. He believes it offers a better look to that corner.

Carroll asked what type of access they have to Old Cheney. McKeeman stated that they have a driveway to Old Cheney. It is being recommended that it be taken out, but they are not in favor of that.

Jonathan Knutson, owner of the property, stated that one thing that concerns the corner property is access to that property. Another issue is that he does not see any harm in this is because there is a golf course, a bike path and wetland behind the building. The purpose of a 40 feet setback in an O2 zoning is to create building spacing in a higher building density area. This is a unique situation because no buildings will be built behind the property so there is no issue of having two buildings too close together.

Krieser asked if they could still have the building in the back and the parking in the front if the setback was kept at 40 feet. Knutson stated that they could not because it would not be economically feasible to do that.

Mark Hunzeker, appearing on behalf of Guy Lammle who is owner of the HiMark Golf Course, stated that he does not believe there has been much compelling evidence presented to meet the conditions of the ordinance. This owner purchased the property after the lot grades were established and easily ascertained. It would be possible to have a two-story building as opposed to a one-story building utilizing the existing required setbacks. Parking is permitted in the rear yard and you do not need a variance to park in the rear yard. They feel this is better. It involves less building footprint. The staff report rightly points out that there is not much relationship between the grade of this site and a need for a particular setback variance.

They request that the Board deny the application.

Carroll asked about the access to the property to the south. Will stated that as part of the change of zone, the house would have use of the driveway to Old Cheney, but if the use changes, the driveway would go away and would have shared access through the property to the north onto 84th Street. Carroll asked about the setback requirements. Will stated that it would have a 20 foot setback along 84th Street and the rear yard setback would be 40 feet. Parking is allowed in the rear yard, but prohibited in the front yard, so the front yard setback would need to be maintained.

Kuzelka asked about the relationship to the floodplain. Will stated that he is not aware of any issues, as it is not a part of the review for a variance. Kathe stated that development is allowed in the floodplain as long as you meet certain criteria. The only way it would be prohibited if it was in the floodway. Will stated that the floodplain is not relevant to this application.

Carroll asked if there was further testimony in favor of or against this appeal. With no one appearing, Carroll closed the public hearing and proceeded with the Executive Session.

ACTION

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Kuzelka moved to deny this application, seconded by Krieser.

Kuzelka stated that they applicant knew what they were getting into and there are other solutions that would not cause a wall to be built along a public use area.

Carroll stated that the applicant purchased the property after the 84th Street improvements and this does not meet the criteria they are required to consider.

Hancock stated that he believes the peculiar and unusual circumstances do exist as the change in grade meets those conditions. But because they exist does not mean that it must be approved.

Motion to deny carried 5-0. Carroll, Francis, Hancock, Krieser and Kuzelka voting 'yes'.

Proposed Amendment to Lincoln Municipal Code Chapter 27.75 - Board of Zoning Appeals.

Will stated that staff is continuing to work on revisions to the zoning ordinance pertaining to the Board of Zoning Appeals and will bring the proposed changes forward in the future.

The meeting was adjourned at 2:06 p.m.